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Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

Agency/Board/Commission: University of Tennessee

Division:

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Revision Type (check all that apply):

☐ Amendment
☒ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables.)

Chapter Number	Chapter Title
1720-01-11	Charges for Producing Copies of Public Records
Rule Number	Rule Title
1720-01-11-.01	Purpose
1720-01-11-.02	Definitions
1720-01-11-.03	Production Costs
1720-01-11-.04	Copying Costs
1720-01-11-.05	Labor Costs
1720-01-11-.06	Delivery Costs
1720-01-11-.07	Payment of Production Costs
1720-01-11-.08	Waiver of Production Costs
1720-01-11-.09	Requests for Copies Following Inspection

Rules
of
The University of Tennessee
(All Campuses)

Chapter 1720-1-11
Charges for Producing Copies of Public Records

Table of Contents

1720-1-11-.01	Purpose	1720-1-11-.06	Delivery Costs
1720-1-11-.02	Definitions	1720-1-11-.07	Payment of Production Costs
1720-1-11-.03	Production Costs	1720-1-11-.08	Waiver of Production Costs
1720-1-11-.04	Copying Costs	1720-1-11-.09	Requests for Copies Following Inspection
1720-1-11-.05	Labor Costs		

1720-1-11-.01 Purpose. Following the publication of the Schedule of Reasonable Charges for Copies of Public Records developed by the Office of Open Records Counsel pursuant to T.C.A. § 8-4-604(a), these Rules are promulgated for the purpose of establishing and implementing charges for producing copies of public records of The University of Tennessee. Other statutory provisions, such as T.C.A. § 10-7-506(c), describe charges that may be assessed when specific records are requested for a specific use.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-1-11-.02 Definitions.

- (1) "Labor" means the time reasonably necessary to produce the requested records and includes the time spent locating, retrieving, reviewing, redacting, and reproducing the records.
- (2) "Labor threshold" means the labor of the employee(s) reasonably necessary to produce requested records for the first hour incurred by the University in producing the records.
- (3) "Production costs" means all reasonable costs the University incurred to produce the public records requested by the requesting party. Production costs include copying costs, labor costs, and delivery costs, as described in these Rules.
- (4) "Public record" means any record of the University that is required to be open to inspection under the provisions of the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501 et seq.
- (5) "Public Records Designee" or "PRD" means the person at each campus, institute, or other unit of the University who receives and coordinates public records requests and maintains documentation of public records requests, responses, and charges. For purposes of these Rules, this term includes Human Resource and Purchasing Department employees who independently respond to public records requests for personnel or purchasing records.
- (6) "Requesting party" means the person who requests to inspect or copy public records of the University. To have access to public records, a requesting party must be a citizen of the State of Tennessee.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-1-11-.03 Production Costs. Except as otherwise provided in these Rules, the PRD shall charge the requesting party for production costs as defined in Rule 1720-1-11-.02(3). The production costs charged to the requesting party shall be reasonable. The Schedule of Reasonable Charges for Copies of Public Records, published by the Office of Open Records Counsel, will be used as a guideline to determine the amount a requesting party will be charged for producing copies of public records. The PRD shall utilize the most cost efficient method of producing copies of public records.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-1-11-.04 Copying Costs. Copying costs include the costs related to making copies of the public records requested by the requesting party, by photographic, or other means of duplication.

- (1) The PRD shall assess a charge of fifteen cents (\$0.15) per page for each standard 8 ½ x 11" or 8 ½ x 14" black and white copy produced.
- (2) If a public record is maintained in color, the PRD shall advise the requesting party that the record can be produced in color if the requesting party is willing to pay the higher charge for a color copy. If the citizen then requests a color copy, the PRD shall assess a copy charge of fifty (50) cents per page for each 8 ½ x 11" or 8 ½ x 14" color copy produced.
- (3) The charge for a duplex copy shall be the same as the charge for two (2) separate copies.
- (4) If a copy of a public record is produced on a medium other than 8 ½ x 11" or 8 ½ x 14" paper, the PRD shall assess a copy charge equal to the actual cost of producing a copy of the public record, taking into consideration the amount of material, equipment costs, and the cost of the alternative medium.
- (5) If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is necessary to put the records in a readable and reproducible format or it is necessary to access backup files, and the PRD shall charge the requesting party the actual costs incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.
- (6) Electronic records will be produced only in a read-only format.
- (7) If the PRD utilizes an outside vendor to produce copies of the requested records because the University is legitimately unable to produce the copies, the cost charged by the vendor to the University shall be recovered from the requesting party.
- (8) If the PRD is charged a fee to retrieve requested records from the Tennessee State Library and Archives or from any other entity having possession of requested records, the PRD shall charge the requesting party the cost charged the University for retrieval of the records.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-1-11-.05 Labor Costs. The PRD shall charge the requesting party the hourly wage of the employee(s) reasonably necessary to produce the requested records above the labor threshold defined in Rule 1720-1-11.02(2). The "hourly wage" is based upon the employee(s) base salary and does not include benefits. In calculating the labor costs to be charged to the requesting party, the PRD shall:

- (1) First, determine the number of hours each employee spent producing the requested public records;
- (2) Second, subtract the one (1) hour threshold from the number of hours the highest paid employee spent producing the request;

- (3) Third, multiply the total number of hours to be charged for the labor of each employee by that employee's hourly wage; and
- (4) Fourth, add together the totals for all the employees involved in the request to determine the total amount of the labor costs to be charged to the requesting party.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.06 Delivery Costs. The PRD shall charge the requesting party for the costs incurred by the PRD in delivering the records to the requesting party, in addition to any other charge permitted by these Rules.

- (1) Delivery of copies of public records to the requesting party shall be by hand delivery when the requesting party returns to the PRD's office to retrieve the requested records. If the requesting party chooses not to return to the PRD's office to retrieve the copies, the PRD shall deliver records to the requesting party through the United States Postal Service.
- (2) In the discretion of the PRD, copies of public records may be delivered through other means, including electronically.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.07 Payment of Production Costs. If the requesting party requests copies of public records, the following provisions concerning payment of production costs shall apply:

- (1) The PRD shall provide the requesting party an estimate of the production costs before initiating the production of copies of the requested public records.
- (2) The PRD may require payment in full of all production costs before copies of public records are delivered or otherwise made available to the requesting party.
- (3) Production costs must be paid by cash or check. Cash payments must be for the exact amount of the production costs. Checks must be made payable to The University of Tennessee for the exact amount of the production costs.
- (4) The PRD will provide a receipt to the requesting party upon receipt of payment of the production costs.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.08 Waiver of Production Costs. Waiver of production costs for copies of public records shall be in accordance with the following provisions:

- (1) The PRD shall provide copies of public records without charge if all production costs, as defined in Rule 1720-1-11-.02(3), do not exceed three dollars (\$3.00).
- (2) The PRD shall provide copies of materials for meetings of the Board of Trustees and its committees without charge when requested contemporaneously with the meeting.
- (3) When the requesting party is a federal, state, or local government agency, the PRD shall provide the requested copies of public records without charge.
- (4) When the requesting party is a current employee of the University, the PRD shall provide the requesting party copies of his/her employment records without charge.

- (5) The PRD may provide copies of the following records without charge if the University will not incur significant production costs in providing the records: current enrollment data, basic budget information, history of the University, biographical data for University employees, University policies and procedures, general facts and figures about the University, and similar information.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

1720-01-11-.09 Requests for Copies Following Inspection. The PRD shall not assess a charge to inspect public records, unless otherwise required by law. However, if the requesting party, after requesting to inspect public records, requests copies of public records, the PRD shall charge the requesting party for all production costs.

Authority: T.C.A. § 49-9-209(e); T.C.A. § 10-7-506(a).

The roll-call vote by the Board of Trustees of the University of Tennessee on these proposed rules on October 24, 2008 was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bredesen				x	
Commissioner Webb				x	
Commissioner Givens				x	
Dr. Petersen	x				
Dr. Rhoda			Non-voting		
Mr. Anderson	x				
Ms. Blackburn	x				
Mr. Carroll	x				
Mr. Cates	x				
Mr. Driver	x				
Mr. Forrest			Non-voting		
Mr. Foy	x				
Mr. Gallimore	x				
Ms. Hagler	x				
Mr. Hall	x				
Mr. Horne	x				
Ms. Loughry	x				
Ms. McGruder	x				
Mr. Murphy				x	
Dr. Prevost			Non-voting		
Mr. Schledwitz	x				

Dr. Schommer	x				
Mr. Stansberry	x				
Mr. Talbott	x				
Ms. Tanner	x				
Mr. Wharton	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on October 24, 2008, and is in compliance with the provisions of Tenn. Code Ann. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: 20 Jan 09

Signature: H C Dye

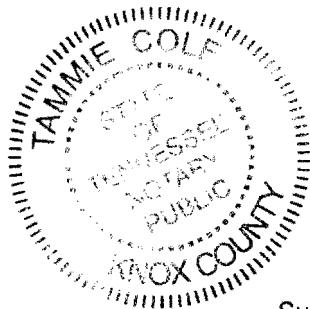
Name of Officer: Hank Dye

Title of Officer: Vice President for Public and Government Relations

Subscribed and sworn to before me on: January 20, 2009

Notary Public Signature: Tammie Cole

My commission expires on: My commission expires June 6, 2011



All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Attorney General and Reporter

2-23-09

Date

Department of State Use Only

Filed with the Department of State on: 2/20/09

SECRETARY OF STATE
PUBLICATIONS

Effective on: 6/20/09

2009 FEB 26 AM 9:04

RECEIVED

Tre Hargett

Tre Hargett
Secretary of State

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no overlap, duplication or conflict with any existing federal or state law or rules. The University of Tennessee has promulgated the rule to comply with the requirements of T.C.A. § 10-7-506(a) and the Schedule of Reasonable Charges developed by the Office of Open Records Counsel.

2. Clarity, conciseness, and lack of ambiguity in the rule or rule:

The proposed rule is clear in purpose and intended execution. The proposed rule is not open to different interpretations.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rule applies only to citizens requesting copies of records and should not impact small businesses. Citizens requesting copies of records for business purposes are not differentiated in the proposed rule.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

The proposed rule will not impact schedules or deadlines.

5. Consolidation or simplification of compliance or reporting requirements:

There will be no additional reporting requirements associated with the proposed rule.

6. Performances standards for small businesses:

There are no performance standards associated with the proposed rule.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rule does not contain any foreseeable barriers or other effects that would stifle entrepreneurial activity, curb innovation, or increase costs.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These are proposed rules of the University of Tennessee for promulgation under the Uniform Administrative Procedures Act. The University of Tennessee previously adopted these rules as public necessity rules pursuant to Tenn. Code Ann. § 4-5-209(a)(4), which authorizes an agency to adopt public necessity rules when "[t]he agency is required by an enactment of the general assembly to implement rules within a prescribed period of time which precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules."

Public Chapter 1179 of the Acts of 2008 amended the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503, *et seq.* ("Public Records Act"). Section 6 of Public Chapter 1179 establishes the Office of Open Records Counsel ("OORC") and requires that the OORC, among other things, "shall establish a schedule or reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5. Section 1 of Public Chapter 1179 amends Tenn. Code Ann. § 10-7-503 to provide that, while the OORC is developing such a schedule, a records custodian may require a requestor to pay the records custodian's actual costs in producing requested public records. However, when such Schedule of Reasonable Charges is developed, this provision will no longer be applicable and the provisions of section (a)(7)(C)(1) shall become effective. That section provides that a "records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested material and to assess such reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604."

The Office of Open Records Counsel has now developed a Schedule of Reasonable Charges for Copies of Public Records. The Schedule of Reasonable Charges specifically states that "[i]f a records custodian determines to charge for copies or duplication of public records, such determination and schedule of charges must be pursuant to a properly adopted rule and evidence by a written policy authorized by the governmental entity's governing authority." The Schedule also states that "[a] records custodian may reduce or waive, in whole or in part, any charge only in accordance with the governmental entity's property adopted written policy." The Schedule further states that "[t]he development date of the Schedule of Reasonable Charges is October 1, 2008, and notification of the development will be given to the Tennessee Code Commission on October 31, 2008." The instructions regarding the Schedule of Reasonable Charges prepared by the OORC for records custodians specifically states that "[a]ll governmental entities must comply with T.C.A. Section 10-7-506(a) in order to charge for copies or duplication of public records requested pursuant to the Tennessee Public Records Act."

Accordingly, the University of Tennessee has promulgated these rules to comply with the requirements of Tenn. Code Ann. § 10-7-506(a) and the Schedule of Reasonable Charges developed by the Office of Open Records Counsel.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The University of Tennessee has promulgated these proposed rules in order to meet the deadlines mandated by the General Assembly in Public Chapter 1179 and to comply with the requirements of Tenn. Code Ann. § 10-7-506(a) and the Schedule of Reasonable Charges developed by the Office of Open Records Counsel.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons most directly affected by these amendments are persons requesting copies of public records of the University of Tennessee.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There is no opinion of the Office of the Attorney General and Reporter or any judicial ruling that directly relates to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Minimal.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

The individuals having substantial knowledge and understanding of these rules are Matthew M. Scoggins, III, Assistant General Counsel, The University of Tennessee, and Hank Dye, Vice President for Public and Government Relations, The University of Tennessee.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

The agency representative who will explain the rule at a scheduled meeting of the committee is Hank Dye, Vice President for Public and Government Relations, The University of Tennessee.

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Mr. Dye's address and telephone number are:

Hank Dye
Vice President for Public and Government Relations
The University of Tennessee
821 Andy Holt Tower
1331 Circle Park
Knoxville, TN 37996-0180
(865) 974-8184

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Not applicable.